Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
32-CA-171093	3/4/2016

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

2016 MAR -4 PM 1:3 NLRB REGION 32 OAKLAND, CA

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer	b. Tel. No.
SolarCity	c. Cell No.
d. Address (street, city, state ZIP code) 47700 Kato Rd, Fremont, CA 94538-7307	e. Employer Representative (b) (6), (b) (7)(C)
	f. Fax No.
	g. e-Mail (b) (6), (b) (7)(C) @solarcity.com
	h. Dispute Location (City and State) Fremont, CA
i. Type of Establishment (factory, nursing home, hotel) Solar Panel R&D center	j. Principal Product or Service Solar Panel Installation and Finance
	k. Number of workers at dispute location 10000

l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (*set forth a clear and concise statement of the facts constituting the alleged unfair labor practices*)

On (b) (6), (b) (7)(C), 2016 the Employer discriminated against employee (b) (6), (b) (7)(C) by suspending (b) (6), (b) without pay in retaliation for and or in order to discourage protected concerted activities. On (b) (6), (b) (7)(C) 2016, the Employer informed (b) (6), (b) (7)(C) that (b) (6), was terminated and was not allowed to speak to other employees at the company.

3. Full name of party filing charge (*if labor organization, give full name, including local name and number*)
(b) (6), (b) (7)(C)

4a. Address (street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)	4b. Tel. No.
	4c. Cell No. (b) (6), (b) (7)(C)
	4d. Fax No.
	4e. e-Mail (b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (*to be filled in when charge is filed by a labor organization*)

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of r	Tel. No.
(b) (6), (b) (7)(C)	Office, if any, Cell No. (b) (6), (b) (7)(C)
Print Name and Title (b) (6), (b) (7)(C)	Fax No.
(b) (6), (b) (6), (b) (7)(C) Date: 3/2/2016	e-Mail (b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

(b) (6), (b) (7)(C)

Seyfarth Shaw LLP
560 Mission Street, 31st Floor
San Francisco, California 94105
(415) 397-2823
fax (415) 397-8549
www.seyfarth.com

(415) 544-1079

jhenderson@seyfarth.com

April 13, 2016

VIA E-MAIL

Janay M. Parnell
Field Examiner
NLRB - Region 32
1301 Clay St., Ste. 300N
Oakland, CA 94612-5224

Re: SolarCity
Case No. 32-CA-171093

Dear Ms. Parnell:

This letter represents the position of SolarCity ("SolarCity" "Employer," or, "the Company") in response to the above-referenced unfair labor practice charge brought by (b) (6), (b) (7)(C) SolarCity denies that it violated the Act. The charge should be dismissed – if it is not withdrawn -- for the reasons described below.

Background Facts

SolarCity is America's largest solar provider. SolarCity is the leader in full-service solar power systems for homes, businesses and governments providing custom design, financing, installation, and monitoring. (b) (6), (b) (7)(C) worked as (b) (6), (b) (7)(C) in the Company's Fremont location. (b) (6), (b) (7)(C) was terminated on (b) (6), (b) (7)(C) 2016, for violating the Company's policy against sexual harassment.[2]

On (b) (6), (b) (7)(C) 2016, (b) (6), (b) (7)(C) SolarCity employee) spoke to (b) (6), (b) (7)(C) about a situation with (b) (6), (b) (7)(C) at work.[3] A couple weeks prior (b) (6), (b) was working out on the (b) (6), (b) when (b) (6), (b) (7)(C) came up behind (b) (6), (b) and said, "You have a nice round butt I'd like to spank it." (b) (6), (b) (7)(C) said (b) (6), (b) had no idea what to say (b) (6), (b) (7)(C)

[1] This position statement is submitted to assist the Region in investigating the above-referenced charge. It is based upon our current understanding and investigation of the facts and circumstances as of the time it is submitted. This position statement, although believed to be true and correct in all respects, does not constitute an affidavit or admission.
[2] A copy of the sexual harassment policy, contained in the employee handbook, is attached as Exhibit A.
[3] A copy of (b) (6), (b) (7)(C) investigation summary is attached as Exhibit B.

was in complete shock. didn't feel comfortable saying anything to because thought the behavior would continue so let know. asked if had done anything besides the comment and said that would raise eyebrows when saw and make small comments under breath, like "oh yeah." said didn't want to get anyone in trouble just wanted someone to talk to and for it to stop. asked if it was okay if talked to said that was okay.

On (b) (6), (b) (7)(C) 2016, spoke to telling that there had been a complaint from the floor regarding an inappropriate comment that was made by to a employee. restated the comment to and asked if had said it. denied saying it. asked if said anything like it that someone might interpret differently than what meant to say, and responded with "no, I don't really talk to anyone." reminded of the Company's policy on harassment and that when does talk to people at work to make sure not saying anything inappropriate. reiterated that this was a serious conversation and it needed to be remedied immediately.

On (b) (6), (b) (7)(C) 2016, SolarCity employee (b) (6), (b) (7)(C) reported to (b) (6), (b) (7)(C) that had made some inappropriate comments to and was harassing advised to talk to which did. described as aggressive and said a lot of people were intimidated by said that they talked occasionally but just tried to avoid because was always negative. had also told when first started in that knew everyone and if the employee, like wanted to get hired (b) (6), (b) (7)(C) was the one who could make this happen. said knew everyone--including supervisors and Human Resources--and they all listened to also said that (b) (6), pass down on the (b) (6), (b) (7) was sitting at the QA table and asked if wanted to borrow computer (laptop). agreed and sat down to use it. sat phone down on the table and grabbed phone and asked if the picture was replied that it was grabbed the phone out of hand and told "We need to definitely go out" and "if you look like that we need to go out" replied, "I don't want to go out with you and I'm not going out with you." said, "Oh we are going out" and "we are SO going out." kept shaking head and said, "no." replied, "why? You don't like (b) (6), (b) (7)(C)" responded, "It doesn't matter what I just don't want to go out with you." then made a comment about (b) (6), (b) (7)(C) and replied, "I don't think so." said that kept repeating over and over "go out with me" and "we are so going to go out."

During this exchange, name came up, though (b) (6), does not remember exactly why – though it could have been in response to question whether hung out with anyone after work. said that a group of them did, including and replied, "Fuck and fuck (b) (6), (b) (7)(C) and fake ass." said was taken back and replied, "There's nothing fake about ." replied, "Yes is fake, I've sucked enough to

[4] A "pass down" on the (b) (6), (b) consists of an employee summarizing the work they performed on their shift, and any issues with any machines they had been working on, to the next shift. SolarCity's facility runs 24 hours per day.

know what's real and what's not." [redacted] was finished with the computer and started to get up. [redacted] said goodbye and [redacted] quickly started to put [redacted] stuff in [redacted] bag to leave. [redacted] said to [redacted] "I'll walk you to your car, because we are so going out." Another employee walked over to the QA table and [redacted] took this opportunity to escape from [redacted]

[redacted] met with [redacted] and [redacted] and let [redacted] know that, since their last conversation, there had been another complaint from a different individual out on the floor. [redacted] started to interrupt [redacted] and asked "who?" [redacted] said that [redacted] needed to look more into the situation and that [redacted] would be putting [redacted] on suspension.

On [redacted] 2016, [redacted] was informed that [redacted] employment had been terminated.

After the termination, [redacted] told [redacted] that [redacted] had advised [redacted] team that [redacted] was no longer with the Company. [redacted] learned that a few things had been happening that caused [redacted] employees to be uncomfortable.

First, [redacted] had told the group that [redacted] was the lead of the line and they needed to follow [redacted] direction.

Second, [redacted] had told the group that [redacted] was [redacted] and that everything needed to go through [redacted] had never given [redacted] this direction or authority.

Third, [redacted] would boss around people in the group. [redacted] would check to see when people were going to lunch and taking breaks. [redacted] appeared to write down what people were doing. According to [redacted] the team felt like they were bullied and felt intimidated. [redacted] also said that one of [redacted] employees, [redacted] had mentioned that [redacted] had been pursuing [redacted]

[redacted] followed up with [redacted] after this revelation.[5] [redacted] told [redacted] that on [redacted] second day on the job [redacted] asked [redacted] "do you have [redacted], [redacted] responded yes, and then [redacted] asked [redacted] if [redacted] had ever had sex. [redacted] told [redacted] that's really none of your business." [redacted] responded, "I don't think you ever had. You need to practice different positions before you get married. That way you will know what you are doing." [redacted] told [redacted] "I don't care – and it's none of your business." [redacted] told [redacted] "[w]e really need to hang out. Let's hang out." [redacted] told [redacted] that [redacted] needed to leave [redacted] alone and that [redacted] had work to do.

[redacted] told [redacted] that the harassment continued. After Valentine's Day, [redacted] asked [redacted] "What did you do for Valentine's Day?" [redacted] replied that [redacted] had stayed home with [redacted] [redacted] told [redacted] that [redacted] had sex with [redacted] [redacted] again made it clear that [redacted] comments were unwelcome, saying: "I don't care I don't like hearing about this or [redacted] that do that kind of stuff."

---

[5] A copy of [redacted] notes from [redacted] interview of [redacted] is attached as Exhibit C.

[redacted] told [redacted] had interactions like this with [redacted] basically every day. [redacted] would ask [redacted] things like, "why don't you give me a hug" when [redacted] would first see [redacted] at work, and made inappropriate comments such as, "you should really have a one night stand sometime."

[redacted] said [redacted] did not complaint about the harassment because [redacted] was embarrassed about it. [redacted] told [redacted] that it was a huge relief when [redacted] was let go, and that [redacted] was happy.

The Company's Position

I. The Charging Party Was Terminated for Sexually Harassing [redacted] Employees

[redacted] alleges that [redacted] was terminated in violation of Section 8(a)(1)[6] of the Act in retaliation for [redacted] union activities and/or in retaliation for engaging in protected concerted activities by complaining regarding SolarCity's proposed compressed work schedule. In short, [redacted] allegations are nonsense. [redacted] was terminated after an investigation revealed [redacted] sexually harassed [redacted] co-workers.

The Company is not aware of any "union activities" by [redacted] If [redacted] was engaging in pro-union activities, [redacted] did not do so overtly. As a result, there can be no 8(a)(1) violation on that allegation. *See Reynolds Elec., Inc.*, 342 NLRB 156, 157 (2004) ("In an 8(a)(1) discharge or layoff case, the issue is whether the decisionmaker knew of the concerted protected activity, not whether the decisionmaker should or reasonably could have known.").

Although [redacted] may have expressed [redacted] disagreement with the proposed alternative workweek in [redacted] 2015, that proposal was put to a vote by the employees, did not pass, and had absolutely no bearing on the Company's suspension and termination of [redacted] approximately [redacted] months later. To find otherwise simply because [redacted] was terminated after complaining about the alternative workweek would be a logical fallacy -- *post hoc ergo propter hoc* ("after the fact, because of the fact")-- and insufficient to support a finding that the Act was violated. *See Easter Seals Conn., Inc.*, 345 NLRB 836, 839 (2005).

Both federal and state law require employers to investigate and take prompt remedial action in response to harassment complaints. Indeed, "the Board has recognized that employers have a legitimate business interest in investigating facially valid complaints of employee misconduct, including complaints of harassment." *Fresh & Easy Neighborhood Mkt., Inc.*, 361 NLRB No. 12, Slip Op. at *38 (2014). Here, the Company's investigation into such allegations was thorough and fair. After the Company learned of [redacted] allegations against [redacted] an HR representative asked [redacted] if [redacted] had made the comments, reminded [redacted] of the Company's anti-harassment policy, but did not rush to judgment. Then, eight days later, when the Company received another sexual harassment complaint against [redacted] it placed [redacted] on suspension. [redacted] was terminated one week later for sexual harassment. Even if [redacted] had previously engaged in Section 7 activity over two months prior to [redacted] termination, it was the substantiated allegations of harassment that led to [redacted]

[6] There is no Section 8(a)(3) allegation of discrimination to discourage membership in any labor organization.

discharge. [redacted] cannot use Section 7 as a shield for [redacted] reprehensible treatment of [redacted] in the workplace.

II. Section 10(j) Injunctive Relief Would Be Inappropriate

The Region has requested SolarCity's position regarding whether Section 10(j) injunctive relief would be appropriate. [redacted] is attempting to exploit the Board's processes (and the federal courts) to force [redacted] reinstatement to a work environment where an investigation proved that [redacted] had subjected at least [redacted] to disgusting, degrading comments about their bodies. The Region, and the Board, should not be hoodwinked into believing [redacted] tall tale of Section 7 activity.

For several additional compelling reasons, discussed below, such relief would be inappropriate.

A. Section 10(j) Relief Is An Extraordinary Remedy

The Board and the federal courts consistently have recognized the extraordinary nature of Section 10(j) relief.[7] Such relief is unwarranted in this case, given the facts and established Section 10(j) principles.

A review of Section 10(j)'s legislative history makes clear that Congress intended this remedy to be invoked only where "substantial injury" would occur otherwise, and where it would be "impossible," or "not feasible," for the Board to return the parties to the *status quo* after a full decision on the merits in an unfair labor practice case.[8] Furthermore, Congress expressed concern that Section 10(j) injunctive relief be used sparingly so as not to "throw decisions of the merits of such cases into the federal district courts and thus to oust the Board of jurisdiction…[.]"[9]

The federal courts repeatedly have confirmed the limited nature of Section 10(j) relief. For example, the United States Court of Appeals for the Second Circuit has stated:

> [W]e note that although Section 10(j) is an exception to the Norris-LaGuardia Act's limitation upon federal court jurisdiction to issue injunctions in labor disputes … it in no way changed the extraordinary nature of the injunctive remedy. Nor did it change the

---

7 For example, former Board Chairman McCulloch underscored that the NLRB sought Section 10(j) injunctions only in cases of extraordinary circumstances, using its power "not as a broad sword, but as a scalpel, ever mindful of the dangers in conducting labor-management relations by way of an injunction." Frank McCulloch, Chairman of the N.L.R.B. Address at the Eighth Annual Joint Industrial Relations Conference (April 19, 1962), in 49 LRRM (BNA) 74, 83 (1962).

8 Senate Committee on Labor and Public Welfare, Federal Labor Relations Act of 1947, Senate Rep. No. 104, 80th Cong., 1st Sess., Cong. Rec. 7164 (daily ed., June 2, 1949).

9 *Id.* at 478.

> basic purpose of the NLRA which envisaged a system in which the Board would, in the first instance, consider and decide the issues arising under the Act and pending before it, subject to later review by the Court of Appeals.

Silverman v. 40-41 Realty Association, Inc., 688 F.2d 678, 680 (2d Cir. 1982).

The Ninth Circuit agrees that "[T]he issuance of a §10(j) injunction, however, is still an extraordinary remedy and a narrow exception to the general rule that labor injunctions are prohibited." *Miller v. California Pacific Medical Center*, 19 F.3d 449, 455 (9th Cir. 1994) (*en banc*).

In short, Congress, the Board, and the federal courts underscore that Section 10(j) relief is appropriate only the most exceptional of circumstances.

B. Section 10(j) Relief In This Case Is Inappropriate

1. General Principles Regarding Section 10(j) Relief

"A preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689 (2008). In *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008), the Supreme Court underscored that such an injunction only should be entered "upon a clear showing that the plaintiff is entitled to such relief." Specifically, the *Winter* Court held that, in order to obtain injunctive relief, a moving party must establish: (1) the movant is likely to succeed on the merits; (2) the movant is likely to suffer irreparable harm; (3) the balance of equities tips in the movant's favor; and (4) an injunction is in the public's interest. *Id.* (emphasis in original).

Prior to *Winter*, the Ninth Circuit had articulated a more flexible standard for determining the propriety of a Section 10(j) injunction. Such authority, however, is now contrary to *Winter* and is "no longer controlling or even viable." *Am. Trucking Ass'ns Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009); *Frankl v. HTH Corporation*, 650 F.3d 1335, 1355 (9th Cir. 2011) (observing that "*Winter* abrogated *Miller's* holding that a mere possibility of irreparable harm can be adequate" to support 10(j) injunctive relief) (emphasis supplied). Indeed, as the Supreme Court explained in *Winter*:

> Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely in the absence of an injunction ... Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.

129 S. Ct. at 374 (emphasis in original).

In assessing the first two factors (*i.e.*, success on the merits and irreparable harm), they are to be evaluated on a sliding scale in which the required degree of "likely" irreparable harm must

increase as the probability of success decreases. *See Scott v. Stephen Dunn & Associates*, 241 F.3d 652, 659-660 (9th Cir. 2001); *Miller*, 19 F. 3d at 459-460. *Cf. Clements v. Alan Ritchey, Inc.* 165 F.Supp.2d 1068, 1076 (N.D. Cal. 2001) ("Where a party shows only a 'fair' chance of success, as opposed to a "probable" success on the merits, the party must also show that the balance of hardships tips in their favor and that there are serious questions pertaining to the merits of the case." (*citing Miller*) (internal citations omitted).[10] Accordingly, the District Court is to consider the competing evidence to determine what chance the Board actually has to prevail. *Miller*, 19 F.3d at 458-460.

2. Likelihood of Success on the Merits.

[redacted] alleges that [redacted] was suspended and then terminated for engaging in union activities and/or in retaliation for complaining about SolarCity's proposed compressed work schedule. [redacted] cannot demonstrate a likelihood of success on the merits. The Company's harassment investigation resulted in credible allegations of misconduct against [redacted] [redacted] apparently would have the Region believe that the Company waited for an opportunity to terminate [redacted] for engaging in Section 7 activity, and used these harassment allegations as a pretext. That argument lacks any evidence to support it, defies logic, and is an insult to [redacted] (and to their Employer) that desire a workplace free of sexual harassment.

3. Likelihood of Irreparable Harm.

As the NLRB's Section 10(j) manual recognizes, irreparable harm is likely to occur where a union has been weakened by an employer's unfair labor practices such that any relief later rewarded may not cure the statutory violations. This concern is not present in this case.

As such, injunctive relief under § 10(j) is not proper as [redacted] will incur no irreparable harm that cannot be remedied through prospective relief. The failure to grant interim relief will not prevent the Board from effectively exercising its ultimate remedial powers, including reinstatement and back pay, in the event it decides the Company has violated the Act. Under the Supreme Court's test for injunctive relief laid out in *Winter*, irreparable harm must be likely, and not merely "possible." There is no likelihood of irreparable harm in this case.

4. Balance of the Hardships.

In *HTH Corporation*, 650 F. 3d 1334 (9th Cir. 2011), the Court noted that where there is a likelihood of success on the merits and a likelihood of irreparable injury, then there is "considerable weight on the [union's] side of the balance of hardships." *Id.* at 1365. But when the converse is true, such as it is here - no likelihood of success on the merits or irreparable harm - then the balance of hardships weighs on the side of the employer. As discussed above, this is not a close case. Injunctive relief may very well require Solar City to reinstate a sexual harasser. The balance of the hardships overwhelmingly favors Solar City.

---

10 *Clements* is a pre-*Winter* decision. Consequently, the sliding scale principle must be grounded in what is "likely," not merely what is "fair."

5. Petitioner's Failure to Show Irreparable Harm

Given the extraordinary nature of injunctive relief, and the Board courts' long admonition that such relief is to be reserved for the exceptional case rather than any time their labor practice charges are alleged, it would be against the public interest to grant such relief in a case such as this where there is no substantial evidence of unfair labor practices.

This is not the kind of situation for which Section 10(j) proceedings are typically entertained, *e.g.*, withdrawal of recognition, discharge of union supporters in an organizing campaign, *etc.* Section 10(j) relief "is designed to fill the considerable time gap between the filing of a complaint by the Board and issuance of its final decision, in those cases in which considerable harm may occur in the interim." *Fuchs v. Hood Indus.*, 590 F.2d 395, 397 (1st Cir. 1979). An injunction is, therefore, an exceptional remedy which should be granted only "in cases of extraordinary circumstances" and the Board should exercise its power "not as a broad sword, but as a scalpel, ever mindful of the dangers inherent in conducting labor management relations by way of injunction." *McLeod v. General Elec. Co.*, 366 F.2d 847, 849-50 (2d Cir. 1966) (set aside and remanded on other grounds by 385 U.S. 533 (1967)).

In short, given the dearth of evidence regarding [redacted] alleged Section 7 activity–and absolutely no connection to [redacted] termination the Board really must decline to give its support to an individual who thinks it perfectly fine to exploit [redacted] position with respect to [redacted] employees in *quid pro quo* fashion – implying that their submission to [redacted] sexual advances will smooth the way to their advancement to [redacted] or to say to a colleague regarding a co-worker, "fuck [redacted] and fuck [redacted] and fake ass" and "I [redacted] to know what's real and what's [illegible]." Whatever [illegible] behavior by [redacted] is not a worthy beneficiary of the Board's or the Court's processes.

Conclusion

For the foregoing reasons, the charge is without merit and should be dismissed, absent a withdrawal. If you have any questions or would like to discuss the situation further, please do not hesitate to contact me.

Very truly yours,

SEYFARTH SHAW LLP

Joshua M. Henderson [redacted]

JMH [redacted]

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 32
1301 Clay St Ste 300N
Oakland, CA 94612-5224

Agency Website: www.nlrb.gov
Telephone: (510)637-3300
Fax: (510)637-3315

April 25, 2016

(b) (6), (b) (7)(C)

Re: SolarCity
Case 32-CA-171093

Dear (b) (6), (b) (7)(C)

We have carefully investigated and considered your charge that SolarCity has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge because there is insufficient evidence to establish a violation of the Act.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents,** enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **May 9, 2016**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than May 8, 2016. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely**. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before May 9, 2016.** The request may be filed electronically

through the ***E-File Documents*** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after May 9, 2016, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ GEORGE VELASTEGUI

GEORGE VELASTEGUI
Regional Director

Enclosure

cc: (b) (6), (b) (7)(C)
SOLARCITY
47700 KATO RD
FREMONT, CA 94538-7307

JOSHUA M. HENDERSON
SEYFARTH SHAW, LLP
560 MISSION ST STE 3100
SAN FRANCISCO, CA 94105-2930

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

_____

Case Name(s).

_____

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

_____

(Signature)